

§ 780.815

§ 780.815 Basic conditions of exemption; second part, processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap.

Under the second part of section 13(b)(15) of the Act, the following conditions must be met in order for the exemption to apply to an employee:

(a) He must be engaged in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap.

(b) The product of the processing must be sugar (other than refined sugar) or syrup.

§ 780.816 Processing of specific commodities.

Only the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap is within the exemption. Operations performed on commodities other than those named are not exempt under this section even though they result in the production of unrefined sugar or syrup. For example, sorghum cane or refinery syrup (which is a by-product of refined syrup) are not named commodities and employees engaged in processing these products are not exempt under this section even though the resultant product is raw sugar. The loss of exemption would obtain for the same reason for employees engaged in processing sugar, glucose, or ribbon cane syrup into syrup.

§ 780.817 Employees engaged in processing.

Only those employees who are engaged in the processing will come within the exemption. The processing of sugarcane to which the exemption applies and in which the employee must be engaged in order to come within it is considered to begin when the processor receives the cane for processing and to end when the cane is processed "into sugar (other than refined sugar) or syrup." Employees engaged in the following activities of a sugarcane processing mill are considered to be engaged in "the processing of" the sugarcane into the named products, within the meaning of the exemption:

(a) Loading of the sugarcane in the field or at a concentration point and hauling the cane to the mill "if performed by employees of the mill." (Such activities performed by employ-

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ees of some other employer, such as an independent contractor, are not considered to be within the exemption.)

(b) Weighing, unloading, and stacking the cane at the mill yard.

(c) Performing sampling tests (such as a trash test or sucrose content test) on the incoming cane.

(d) Washing the cane, feeding it into the mill crushers and crushing.

(e) Operations on the extracted cane juice in the making of raw sugar and molasses: Juice weighing and measurement, heating, clarification, filtration, evaporating, crystallization, centrifuging, and handling and storing the raw sugar or molasses at the plant during the grinding season.

(f) Laboratory analytical and testing operations at any point in the processing or at the end of the process.

(g) Loading out raw sugar or molasses during the grinding season.

(h) Handling, baling, or storing bagasse during the grinding season.

(i) Firing boilers and other activities connected with the overall operation of the plant machinery during grinding operations, including cleanup and maintenance work and day-to-day repairs. (This includes shop employees, mechanics, electricians, and employees maintaining stocks of various items used in repairs.)

§ 780.818 Employees not engaged in processing.

Employees engaged in operations which are not an integral part of processing of the named commodities will not come within the exemption. The following activities are not considered exempt under section 13(b)(15):

(a) Office and general clerical work.

(b) Feeding and housing millhands and visitors (typically this is called the "boarding house").

(c) Hauling raw sugar or molasses away from the mill.

(d) Any work outside the grinding season.

§ 780.819 Production must be of unrefined sugar or syrup.

The second part of the section 13(b)(15) exemption is specifically limited to the production "of sugar (other than refined sugar) or syrup." The production of "refined sugar" a term

which is commonly understood to refer to the refinement of "raw sugar" is expressly excluded. Thus, the exemption does not apply to the manufacture of sugar that is produced by melting sugar, purifying the melted sugar solution through a carbon medium process and the recrystallization of the sugar from this solution. Nor does the exemption apply to the processing of cane syrup into refined sugar or to the further processing of sugar, as for example, beet sugar into powdered or liquid sugar.

Subpart J—Employment in Fruit and Vegetable Harvest Transportation; Exemption From Overtime Pay Requirements Under Section 13(b)(16)

INTRODUCTORY

§ 780.900 Scope and significance of interpretative bulletin.

Subpart A of this part 780 and this subpart J together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(16) of the Fair Labor Standards Act of 1938, as amended. This section provides exemption from the overtime pay provisions of the Act for employees engaging in specified transportation activities when fruits and vegetables are harvested. As appears more fully in subpart A of this part, interpretations in this bulletin with respect to the provisions of the Act discussed are official interpretations upon which reliance may be placed and which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act. The general exemption provided in sections 13(a)(6) and 13(b)(12) of the Act for employees employed in agriculture, are not discussed in this subpart except in their relation to section 13(b)(16). The meaning and application of these exemptions are fully considered in subparts D and E, respectively, of this part 780.

§ 780.901 Statutory provisions.

Section 13(b)(16) of the Act exempts from the overtime provisions of section 7:

Any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables.

§ 780.902 Legislative history of exemption.

Since the language of section 13(b)(16) and its predecessor, section 13(a)(22) is identical, the legislative history of former section 13(a)(22) still retains its pertinency and vitality. The former section 13(a)(22) was added to the Act by the Fair Labor Standards Amendments of 1961. The original provision in the House-passed bill was in the form of an amendment to the Act's definition of agriculture. It would have altered the effect of holdings of the courts that operations such as those described in the amendment are not within the agriculture exemption provided by section 13(a)(6) when performed by employees of persons other than the farmer. (*Chapman v. Durkin*, 214 F. 2d 360, certiorari denied 348 U.S. 897; *Fort Mason Fruit Co. v. Durkin*, 214 F. 2d 363, certiorari denied, 348 U.S. 897.) The amendment was offered to exempt operations which, in the sponsor's view, were meant to be exempt under the original Act. (See 107 Cong. Rec. (daily ed.) p. 4523.) The Conference Committee, in changing the provision to make it a separate exemption made it clear that it was "not intended by the committee of conference to change by this exemption (for the described transportation employees) * * * the application of the Act to any other employees. Nor is it intended that there be any implication of disagreement by the conference committee with the principles and tests governing the application of the present agricultural exemption as enunciated by the courts." (H. Rept. No. 327, 87th Cong., first session, p. 18.)

§ 780.903 General scope of exemption.

The exemption provided by section 13(b)(16) is in two parts, subsection (A), which exempts employees engaged in